



**State of Wisconsin  
2009 - 2010 LEGISLATURE**

LRBa0183/1  
CMH&RPN:cjs;jf

**ASSEMBLY AMENDMENT 3,  
TO 2009 ASSEMBLY BILL 78**

April 17, 2009 – Offered by Representative GUNDRUM.

1 At the locations indicated, amend the bill as follows:

2       **1.** *Page 2, line 2:* delete the material beginning with that line and ending with  
page 3, line 2, and substitute:

3           “895.46 **(9)** (a) The state shall reimburse a state officer or state employee for  
4 reasonable attorney fees and costs incurred by the officer or employee in connection  
5 with a John Doe proceeding under s. 968.26 (2) arising from the officer’s or employee’s  
6 conduct in the performance of official duties if all of the following apply:

7           1. The officer or employee was acting within the scope of his or her employment.  
8           2. The officer or employee is not convicted of a crime arising from the conduct  
9 that is the subject of any criminal complaint issued under s. 968.26 (2) (d).

10          (b) The state shall reimburse a state officer or state employee for reasonable  
11 attorney fees and costs incurred by the officer or employee in defending a criminal

1 complaint issued under s. 968.26 (2) (d) arising from the officer's or employee's  
2 conduct in the performance of official duties if all of the following apply:

- 3       1. The officer or employee was acting within the scope of his or her employment.  
4       2. The officer or employee is not convicted of a crime arising from the conduct  
5 that is the subject of the criminal complaint issued under s. 968.26 (2) (d).".

6       **2.** Page 3, line 10: after "district attorney" insert "or, if the complaint may  
relate to the conduct of the district attorney, to another prosecutor under s. 978.045".

7       **3.** Page 3, line 11: after "the judge" insert "may appoint a prosecutor under s.  
978.045 to attend or participate in the proceeding. The extent to which the  
prosecutor may attend or participate is within the judge's discretion. The judge".

8       **4.** Page 3, line 20: after "secret." insert "The judge may allow the district  
attorney who requested the proceeding under sub. (1) or any prosecutor appointed  
under sub. (2) (c) to examine witnesses.".

9       **5.** Page 4, line 14: after "(b)" insert "1. In this paragraph, "district attorney"  
includes a prosecutor to whom the judge has referred the complaint under par. (a.)".

10      **6.** Page 4, line 14: before "If a" insert:

11      "2.".

12      **7.** Page 4, line 15: after "the referral," insert "unless the judge extends that  
period for cause shown,".

13      **8.** Page 4, line 18: after "the matter" insert "that are in the custody of the  
district attorney".

1           **9.** Page 4, line 20: after “charges.” insert “The judge may require a law enforcement agency to provide to him or her any investigative reports that the law enforcement agency has on the matter.”.

2           **10.** Page 5, line 1: after "(d)" insert "1.".

3           **11.** Page 5, line 1: after “(b),” insert “if the judge does not appoint a prosecutor  
under par. (c),”.

4           **12.** Page 5, line 5: after “attorney” insert “or other prosecutor to whom the  
judge referred the complaint under par. (a)”.

5           **13.** Page 5, line 5: after that line insert:

6           “2. In a proceeding convened under par. (b), if the judge appoints a prosecutor  
7       under par. (c), the prosecutor may issue charges.”.

**14.** Page 6, line 2: after that line insert:

9           **“SECTION 7e.** 978.045 (1r) (i) of the statutes is created to read:

10                   **978.045 (1r)** (i) A judge determines that a complaint received under s. 968.26  
11                   (2) (a) relates to the conduct of the district attorney to whom the judge otherwise  
12                   would refer the complaint.

13           **SECTION 7g.** 978.045 (1r) (j) of the statutes is created to read:

14 978.045 (1r) (j) A matter is forwarded under s. 968.26 (2) (b) to the judge.”.

15 (END)